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**I-5 / Everett HOV  
Design-Build Project**

**REQUEST  
FOR  
PROPOSALS**

**Appendix P3  
Section 404 Clean Water Act –  
Nationwide Permit 18**

**Addendum #4:**

**February 8, 2005**



DEPARTMENT OF THE ARMY  
SEATTLE DISTRICT, CORPS OF ENGINEERS  
P.O. BOX 3755  
SEATTLE, WASHINGTON 98124-3755

RECEIVED

JAN 27 2005

REPLY TO  
ATTENTION OF

JAN 24 2005

ENVIRONMENTAL

Regulatory Branch

Washington State Department of Transportation  
Mr. Ben Brown  
Post Office Box 330310  
Seattle, Washington 98133-9710

Reference: 200401448  
Washington State  
Dept. of Transportation

Ladies and Gentlemen:

Our regulatory program utilizes a series of nationwide permits (NWP) to authorize specific categories of work that have minimal impact on the aquatic environment when conducted in accordance with the permit conditions (*Federal Register*, January 15, 2002, Vol. 67, No. 10). Based on the information you provided to us, NWP 18, *Minor Discharges*, authorizes your proposal to place fill in wetlands (0.03 acres), jurisdictional ditches (0.01 acres), and an unnamed stream (20 cubic yards) to construct the I-5 Everett HOV project and construct a stormwater treatment facility, as depicted on the enclosed drawings dated November 2004. The project would occur in wetlands adjacent to and tributaries adjacent to the Snohomish River at the City of Everett, Snohomish County, Washington.

In order for this NWP authorization to be valid, you must ensure that the work is performed in accordance with the enclosed *Nationwide Permit 18, Terms and Conditions* and the following special conditions that we have added to ensure that this project would have no more than a minimal adverse impact on the aquatic environment:

a. You must implement and abide by the ESA requirements and/or agreements set forth in the *Biological Assessment, I-5 Everett HOV Lanes, SR 526 to Marine View Drive*, dated April 2004 in its entirety. The U.S. Fish and Wildlife Service (USFWS) concurred with a finding of "may affect, not likely to adversely affect" based on this document on July 8, 2004 (USFWS Reference Number #1-3-04-I-0792). The National Marine Fisheries Service (NMFS) concurred with a finding of "may affect, not likely to adversely affect" based on this document on July 6, 2004 (NMFS Reference Number #2004/00667). Both agencies will be informed of this permit issuance. Failure to comply with the commitments made in this document constitutes non-compliance with the ESA and your U.S. Army Corps of Engineers permit. The USFWS/NMFS is the appropriate authority to determine compliance with ESA.

b. The wetland area created as compensatory mitigation for work authorized by this permit shall not be made the subject of a future individual or general Department of the Army permit application for fill or other development, except for the purposes of enhancing or restoring the mitigation associated with this project. In addition, a description of the mitigation area identified in the final mitigation plan as approved, and any subsequent permit mitigation area revisions,

will be recorded with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records to or interest in real property. Proof of this recorded documentation must be provided to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch within 60 days from the date of permit issuance.

c. A status report on the mitigation construction, including as-built drawings, must be submitted to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch, 13 months from the date of permit issuance. Annual status reports on mitigation construction are required until mitigation construction is complete.

d. The permittee shall implement and abide by the mitigation plan *Draft Wetland Mitigation Plan: Interstate 5 Everett HOV, SR 526 to SR 2 Vicinity* dated November 24, 2004, as corrected on December 29, 2004. Mitigation monitoring shall be performed for years 1, 2, 3, 5, 7, and 10 and mitigation monitoring reports summarizing all monitoring results will be due in years 1, 3, 5, 7, and 10 from the due date of the as-built drawings of the mitigation site. All reports must be submitted to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch and must prominently display the reference number 200401448.

In order for this NWP authorization to be valid, the Washington State Department of Ecology (Ecology) must have issued or waived Section 401 Water Quality Certification (WQC) and, for Washington's 15 coastal counties, concurred with or waived a Coastal Zone Management (CZM) consistency determination. We are unable to determine whether or not your project requires an individual WQC and CZM consistency determination response. Before you can proceed with the work authorized by this NWP, you must contact the following Ecology office for their determination:

Nationwide Permit Coordinator  
Department of Ecology  
SEA Program  
Post Office Box 47600  
Olympia, Washington 98504-7600  
Telephone (360) 407-6926

If more than 180 days pass without the State responding to your concurrence requests, your requirement to obtain an individual WQC and CZM consistency determination response becomes waived. You may then proceed to construction.

For this project, the Federal Highway Administration (FHWA) is the Federal lead agency responsible for compliance with Section 7 of the Endangered Species Act (ESA), the Magnuson-Stevens Fishery Conservation and Management Act (MSA), as amended by the Sustainable Fisheries Act of 1996, and Section 106 of the National Historic Preservation Act. For the purpose of this Department of the Army authorization, the Corps has determined that this project will comply with the requirements of the above laws provided you comply with special condition "a" listed above.

We have completed an "approved jurisdictional determination" for the project area. The U.S. Army Corps of Engineers has determined that the boundaries of the wetlands and ditches as shown on the enclosed drawings dated November 2004 accurately identify waters of the U.S. in the project area. This approved jurisdictional determination is valid for a period of 5 years from the date of this letter unless new information warrants revision of the determination. You have the right to appeal this determination pursuant to the requirements of the enclosed *Administrative Appeal Rule* package.

Our verification of this NWP is valid for 2 years from the date of this letter unless the NWP is modified or revoked prior to that date. If the authorized work has not been completed by that date, please contact us to discuss the status of your authorization.

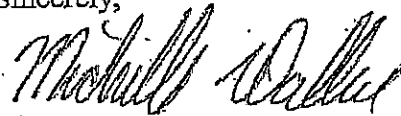
If this project complies with all terms and conditions of this NWP, you will need no further authorization from us. However, you must still obtain all State and local permits that apply to your project. Also, we remind you that failure to comply with all terms and conditions of this NWP verification invalidates your authorization and could result in a violation of Section 404 of the Clean Water Act and/or Section 10 of the 1899 Rivers and Harbors Act.

Upon completing the authorized work, please fill out and return the enclosed *Certificate of Compliance with Department of the Army Permit* form to the address indicated on the form. Your signature on this form is our assurance that the completed work and any required mitigation was conducted in accordance with the terms and conditions of this NWP.

Thank you for your cooperation during the permit process. Your efforts help us protect our nation's aquatic resources, including wetlands. We are interested in your thoughts and opinions concerning your experience with our Regulatory Program and encourage you to complete a customer service survey form. This form and information about our administrative appeal process is available on our website at: [www.nws.usace.army.mil/reg.html](http://www.nws.usace.army.mil/reg.html).

A copy of this letter with drawings and conditions will be furnished to Mr. Dan Hagglund at the Washington State Department of Transportation, Post Office Box 330310, Seattle, Washington 98133-9710 and to Mr. Jason Smith at the MAP Team, 3190 - 160<sup>th</sup> Avenue Southeast, Bellevue, Washington 98008-5452. If you have any questions about this letter or our regulatory program, please contact me at (206) 764-6912 or via email at [Kathryn.J.Stenberg@nws02.usace.army.mil](mailto:Kathryn.J.Stenberg@nws02.usace.army.mil).

Sincerely,



Michelle Walker  
Chief, South Applications Review Section

Enclosures



WATER QUALITY SITE-1  
STORMWATER TREATMENT  
AND WETLAND MITIGATION

**END PROJECT**  
**AP 194-79**

WIDEN ROADWAY TO  
'CONSTRUCT AN HOV LANE  
IN EACH DIRECTION AND OTHER  
INTERCHANGE RELATED IMPROVEMENTS  
TO IMPROVE SAFETY AND TRAFFIC FLOW

Datum: NAVD 88  
CORPS reference # 1200401448

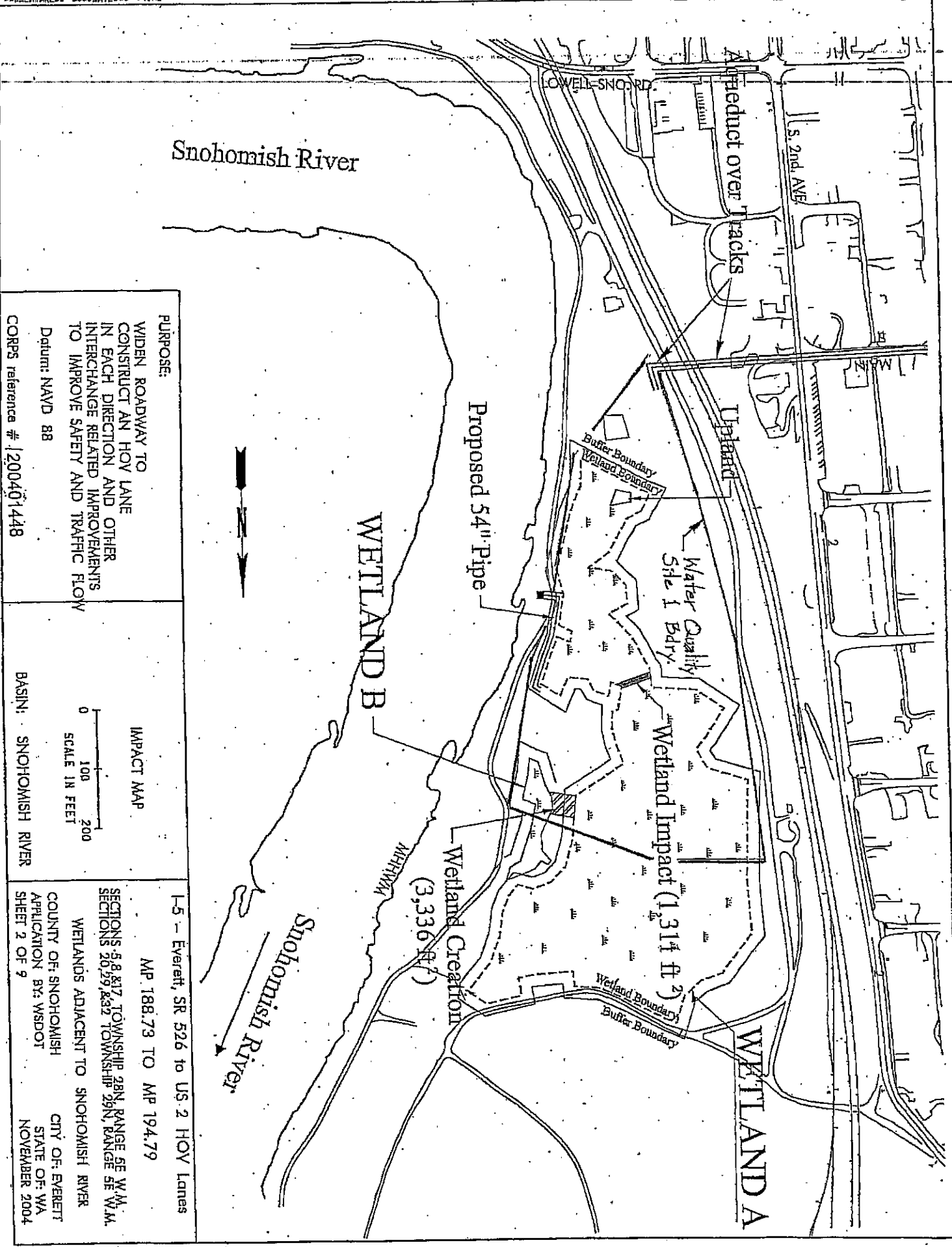
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HEAT IN FLY

BASIN: SNOHOMISH RIVER

I-5 - Everett, SR 526 to US 2 HOV Lanes  
MP 188.73 TO MP 194.79

SECTIONS 5,8, & 17, TOWNSHIP 28N, RANGE 5E W.M.,  
SECTIONS 20, 29, & 32 TOWNSHIP 29N, RANGE 5E W.M.,  
IN: WETLANDS ADJACENT TO SNOHOMISH RIVER

COUNTY OF: SNOHOMISH  
CITY OF: EVERETT  
APPLICATION BY: WSDOT  
STATE OF: WA  
SHEET 1 OF 9  
NOVEMBER 2004



**PURPOSE:**

WIDEN ROADWAY TO  
CONSTRUCT AN HOV LANE  
IN EACH DIRECTION AND OTHER  
INTERCHANGE RELATED IMPROVEMENTS  
TO IMPROVE SAFETY AND TRAFFIC FLOW

Datum: NAVD 88

CORPS reference # 1200401448

**IMPACT MAP**



BASIN: SNOHOMISH RIVER

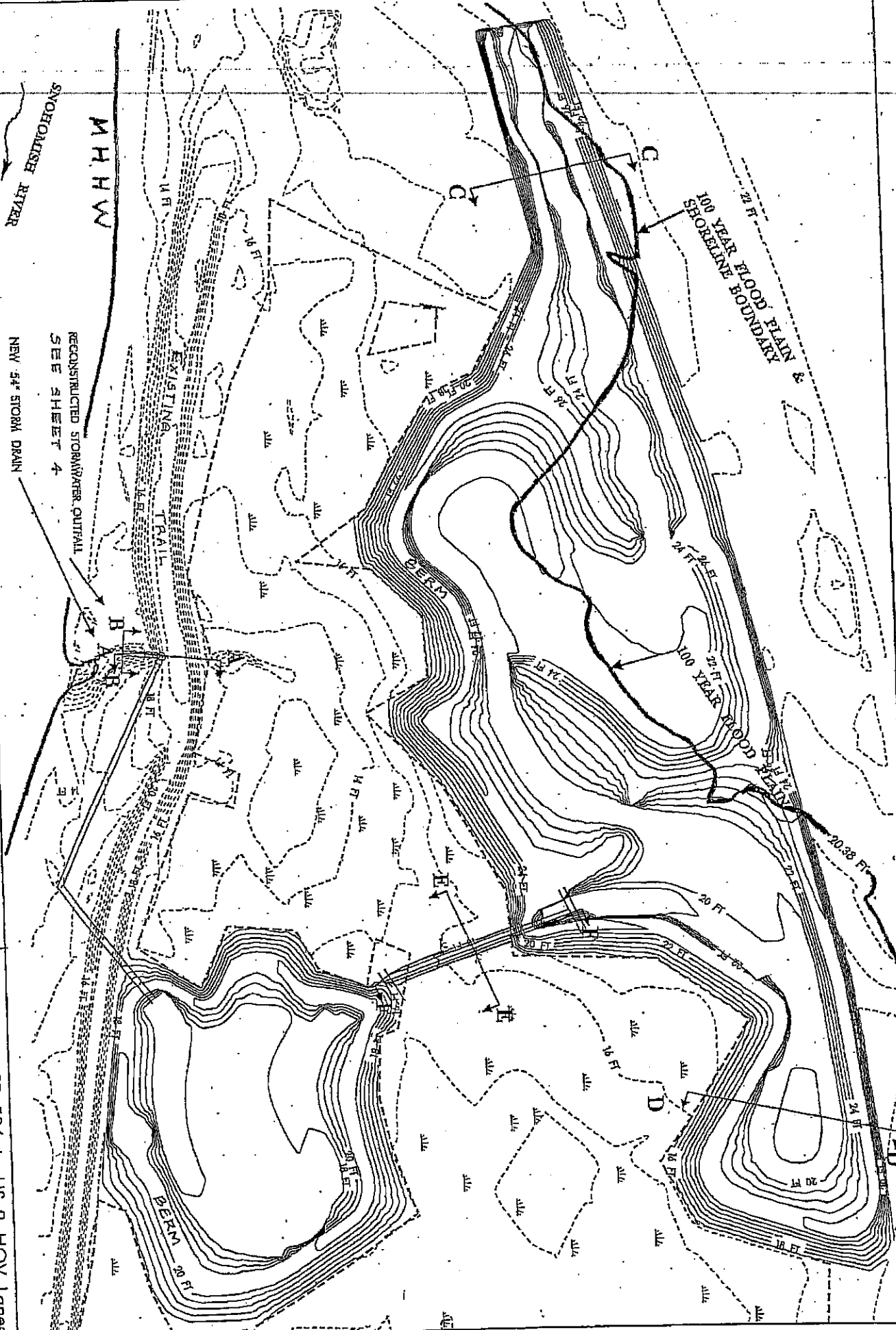
I-5 - Everett, SR 526 to US 2 HOV Lanes

MP 188.73 TO MP 194.79

SECTIONS 5, 8, & 17 TOWNSHIP 28N, RANGE 5E W.M.  
SECTIONS 20, 29, & 32 TOWNSHIP 29N, RANGE 5E W.M.

WETLANDS ADJACENT TO SNOHOMISH RIVER

COUNTY OF: SNOHOMISH CITY OF: EVERETT  
APPLICATION BY: WSDOT STATE OF: WA  
SHEET 2 OF 9 NOVEMBER 2004



CORPS reference # 1200401448

0 50 100  
SCALE IN FEET

BASIN: SNOHOMISH RIVER

CONCEPTUAL  
GRADING PLAN

1-5 - Everett, SR 526 to US 2 HOV Lanes  
MP 188.73 TO MP 194.79  
WETLANDS ADJACENT TO SNOHOMISH RIVER  
SHEET 3 OF 9  
NOVEMBER 2004

EXISTING OUTFALL  
ENTRANCE

A

WALKING TRAIL (PAVED)

EXISTING HEADWALL

ENERGY DISSIPATER

B

B

9.364

9.806

OHWM

A

TOP OF BANK

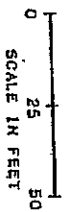
MEAN HIGHER  
HIGH WATER LINE

8.86 FEET

TOP OF BANK

SNOHOMISH RIVER

OUTFALL PLAN



PURPOSE:  
WIDEN ROADWAY TO  
CONSTRUCT AN HOV LANE  
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INTERCHANGE RELATED IMPROVEMENTS  
TO IMPROVE SAFETY AND TRAFFIC FLOW

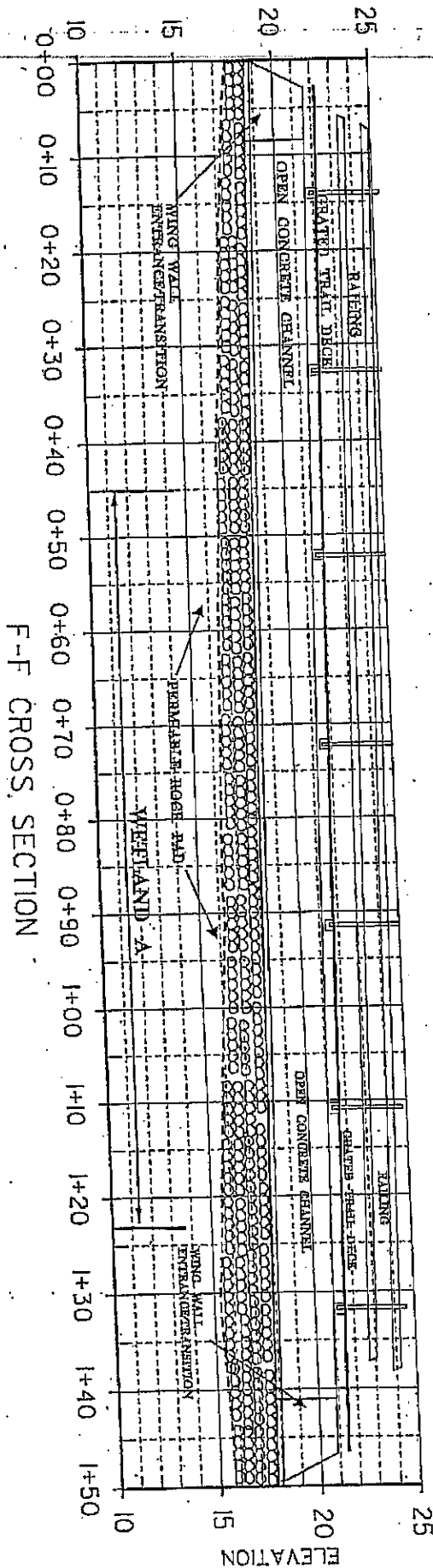
BASIN: SNOHOMISH RIVER

1-5 - Everett, SR 526 to US 2 HOV Lanes  
MP 188.73 TO MP 194.79  
SECTIONS 5, 8, & 17, TOWNSHIP 28N, RANGE 5E W.M.  
SECTIONS 20, 29, & 32 TOWNSHIP 29N, RANGE 5E W.M.  
WETLANDS ADJACENT TO SNOHOMISH RIVER  
COUNTY OF SNOHOMISH  
APPLICATION BY: WSDOT  
SHEET 4 OF 9  
CITY OF EVERETT  
STATE OF WA  
NOVEMBER 2004

CORPS reference # 1200401448



ELEVATION



F-F CROSS SECTION

PURPOSE:  
WIDEN ROADWAY TO  
CONSTRUCT AN HOV LANE  
IN EACH DIRECTION AND OTHER  
INTERCHANGE RELATED IMPROVEMENTS  
TO IMPROVE SAFETY AND TRAFFIC FLOW

CORPS reference # 200401448

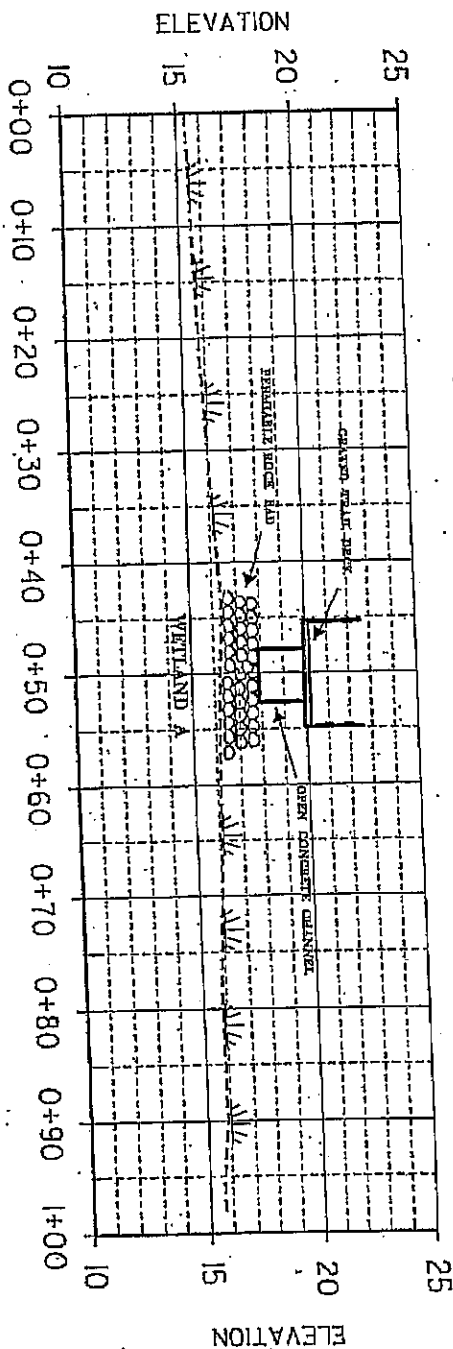
BASIN: SNOHOMISH RIVER

CROSS SECTION

L-5 - Everett, SR 526 to US 2 HOV Lanes  
MP 188.73 TO MP 194.79  
SECTIONS 5, 8, & 17, TOWNSHIP 28N, RANGE 5E, W.M.  
SECTIONS 20, 29, & 32 TOWNSHIP 29N, RANGE 5E, W.M.  
WETLANDS ADJACENT TO SNOHOMISH RIVER  
COUNTY OF SNOHOMISH  
APPLICATION BY: WSDOT  
SHEET 5 OF 9  
CITY OF EVERETT  
STATE OF WA  
NOVEMBER 2004

AV4000A.136 Ever 877 HOV NORTHERLYS\In-charge\W-1\Wd-Farm\Package.dgn

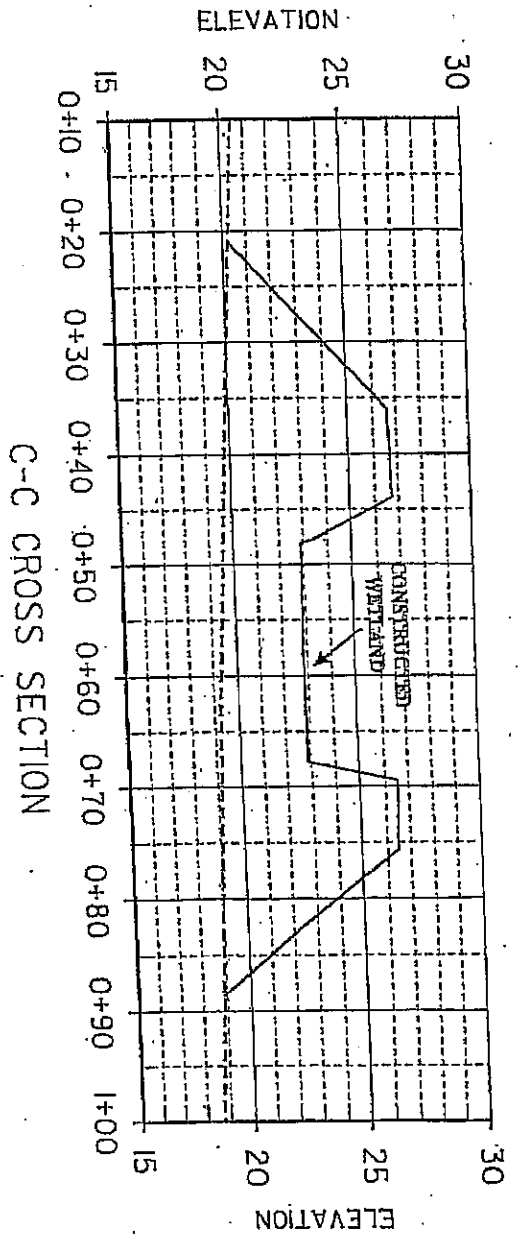
# E-E CROSS SECTION



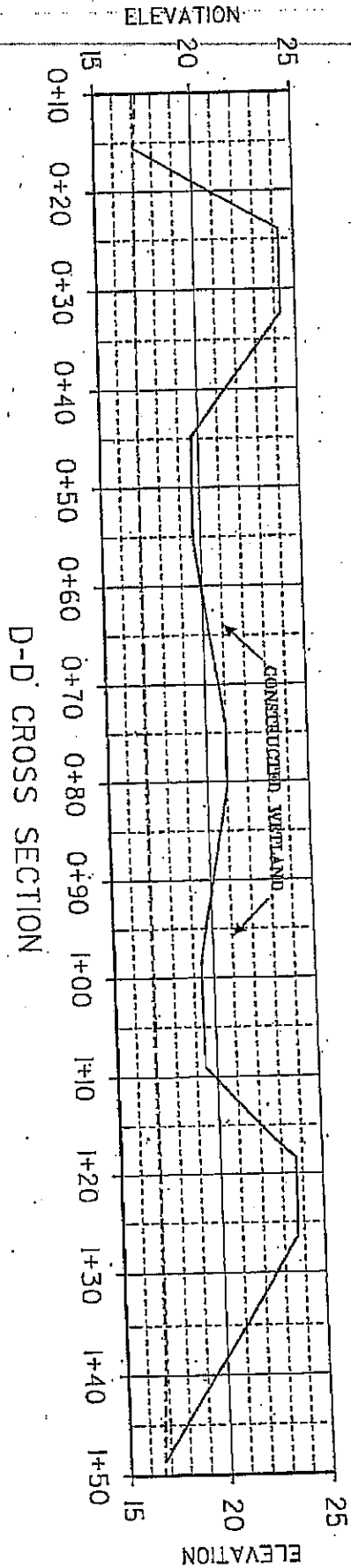
**PURPOSE:**  
WIDEN ROADWAY TO  
CONSTRUCT AN HOV LANE  
IN EACH DIRECTION AND OTHER  
INTERCHANGE RELATED IMPROVEMENTS  
TO IMPROVE SAFETY AND TRAFFIC FLOW

**CROSS SECTION**  
BASIN: SNOHOMISH RIVER

1-5 - Everett, SR 526 to US 2 HOV Lanes  
MP 188.73 TO MP 194.79  
SECTIONS 5, 8, & 17, TOWNSHIP 28N, RANGE 5E W.M.  
SECTIONS 20, 29, & 32 TOWNSHIP 29N, RANGE 5E W.M.  
WETLANDS ADJACENT TO SNOHOMISH RIVER  
COUNTY OF: SNOHOMISH  
APPLICATION BY: WSDOT  
SHEET 6 OF 9  
CITY OF: EVERETT  
STATE OF: WA  
NOVEMBER 2004



C-C CROSS SECTION



D-D' CROSS SECTION

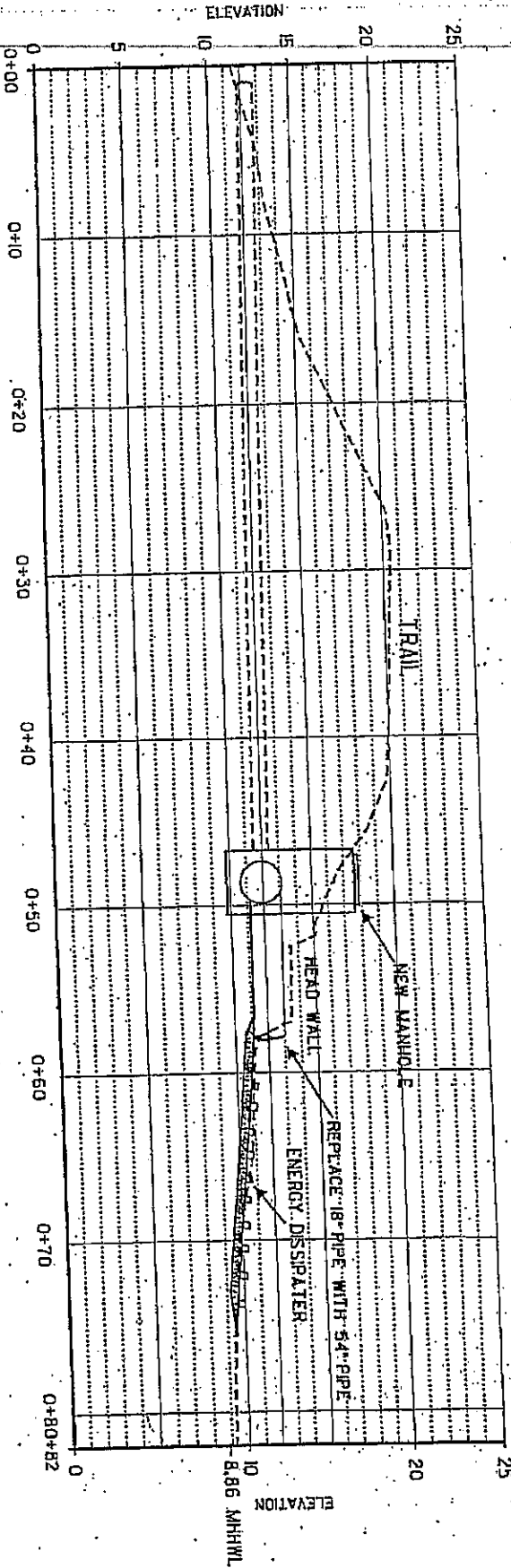
**PURPOSE:**  
WIDEN ROADWAY TO  
CONSTRUCT AN HOV LANE  
IN EACH DIRECTION AND OTHER  
INTERCHANGE RELATED IMPROVEMENTS  
TO IMPROVE SAFETY AND TRAFFIC FLOW

CORPS reference # 1200401448.

CROSS SECTION

**BASIN: SNOHOMISH RIVER**

I-5 - Everett, SR 526 to US 2 HOV Lanes  
 MP 188.73 TO MP 194.79  
 SECTIONS 5, 8 & 17, TOWNSHIP 28N, RANGE 5E W.M.  
 SECTIONS 20, 29, & 32 TOWNSHIP 29N, RANGE 5E W.M.  
 WETLANDS ADJACENT TO SNOHOMISH RIVER  
 COUNTY OF: SNOHOMISH  
 APPLICATION BY: WSDOT  
 SHEET 7. OF 9  
 CITY OF: EVERETT  
 STATE OF: WA  
 NOVEMBER 2004



SECTION A-A  
1 inch = 10 feet

EXISTING  
PROPOSED

PURPOSE:  
WIDEN ROADWAY TO  
CONSTRUCT AN HOV LANE  
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TO IMPROVE SAFETY AND TRAFFIC FLOW

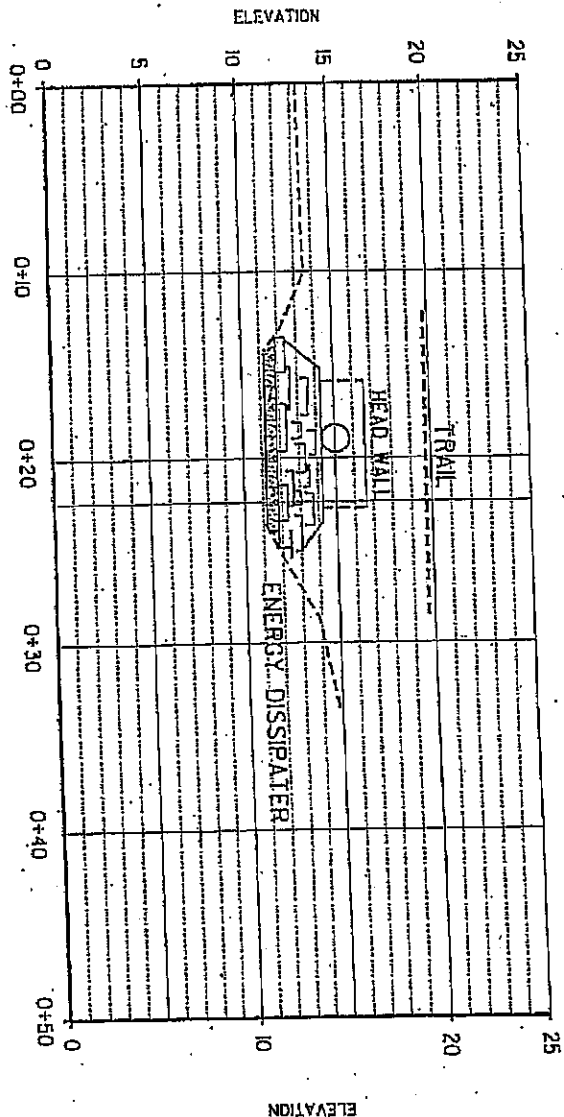
CORPS reference # 120040148

CROSS SECTION

BASIN: SNOHOMISH RIVER

I-5 - Everett, SR 526 to US 2 HOV Lanes  
MP 188.73 TO MP 194.79  
SECTIONS 5, 6, 17, TOWNSHIP 28N, RANGE 5E W.M.  
SECTIONS 20, 29, 32 TOWNSHIP 29N, RANGE 5E W.M.  
WETLANDS ADJACENT TO SNOHOMISH RIVER  
COUNTY OF SNOHOMISH  
APPLICATION BY: WSDOT  
SHEET 8 OF 9  
CITY OF EVERETT  
STATE OF WA  
NOVEMBER 2004

DESIGN PLANVIEW



PURPOSE:  
WIDEN ROADWAY TO  
CONSTRUCT AN HOV LANE  
IN EACH DIRECTION AND OTHER  
INTERCHANGE RELATED IMPROVEMENTS  
TO IMPROVE SAFETY AND TRAFFIC FLOW

CORPS reference # 1200401448

CROSS SECTION

BASIN: SNOHOMISH RIVER

1-5 - Everett, SR 526 to US 2 HOV Lanes  
MP 188.73 TO MP 194.79  
SECTIONS 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100  
COUNTY OF: SNOHOMISH  
CITY OF: EVERETT  
APPLICATION BY: WSDOT  
STATE OF: WA  
SHEET 9 OF 9  
NOVEMBER 2004



US Army Corps  
of Engineers  
Seattle District

# NATIONWIDE PERMIT 18

## Terms and Conditions

Effective Date: March 18, 2002



- 
- A. Description of Authorized Activities – page 1
  - B. Corps Regional Specific Conditions for this NWP – page 2
  - C. EPA, Puyallup Tribe and Chehalis Tribe WQC Conditions for this NWP – page 2
  - D. State WQC Conditions for this NWP – page 2
  - E. State CZM Consistency Determination Conditions for this NWP – page 3
  - F. Corps National General Conditions for all NWPs – page 3
  - G. Corps Regional General Conditions for all NWPs – page 10
  - H. Additional Limitations on the Use of NWPs – page 12
  - I. Further Information – page 12
- 

In addition to any special condition that may be required on a case-by-case basis by the District Engineer, the following terms and conditions must be met, as applicable, for a Nationwide Permit 18 authorization to be valid in Washington State.

### A. DESCRIPTION OF AUTHORIZED ACTIVITIES

**Minor Discharges.** Minor discharges of dredged or fill material into all waters of the US if the activity meets all of the following criteria:

- a. The quantity of discharged material and the volume of area excavated does not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;
- b. The discharge, including any excavated area, will not cause the loss of more than 1/10-acre of a special aquatic site, including wetlands. For the purposes of this NWP, the acreage limitation includes the filled area and excavated area plus special aquatic sites that are adversely affected by flooding and special aquatic sites that are drained so that they would no longer be a water of the US as a result of the project;
- c. If the discharge, including any excavated area, exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line or if the discharge is in a special aquatic site, including wetlands, the permittee notifies the District Engineer in accordance with the "Notification" General Condition.

For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands (also see 33 CFR 330.1(e)); and

- d. The discharge, including all attendant features, both temporary and permanent, is part of a single and complete project and is not placed for the purpose of a stream diversion. (Sections 10 and 404)

## B. CORPS REGIONAL CONDITIONS FOR THIS NWP

None.

## C. EPA, PUYALLUP TRIBE AND CHEHALIS TRIBE WQC CONDITIONS FOR THIS NWP

EPA, Puyallup Tribe and Chehalis Tribe water quality certification (WQC) has been denied without prejudice. An individual WQC is required for all Section 404 activities.

## D. STATE WQC CONDITIONS FOR THIS NWP

State WQC has been partially denied without prejudice for this permit. An individual 401 Certification is required for projects or activities authorized under this NWP if the project/activity will likely result in any of the following adverse effects:

1. The project or activity will likely cause or contribute to an exceedance of a State water quality standard (WAC 173-201A) or sediment quality standard (WAC 173-204). The requirement to obtain an individual 401 certification shall not apply to projects or activities that are carried out in accordance with the following permits, approvals, or management practices. These projects are presumed to comply with state water quality standards including state sediment management standards:

- a. For WSDOT in-water or over-water construction and maintenance activities, an individual 401 certification is not required for those projects carried out in compliance with 2 through 4 below and the Ecology approved Implementing Agreement regarding compliance with the state of Washington Surface Water Quality Standards.

Compliance with this condition will be determined through receipt of a signed statement by the WSDOT project engineer or maintenance supervisor, guaranteeing that the project will meet the latest Ecology approved Water Quality Implementing Agreement for work In-Water. This statement shall be sent to the Corps of Engineers along with the JARPA application.

2. Projects or activities that cause or contribute to a discharge to a waterbody on the state's list of impaired waterbodies [i.e., the 303(d) list] and the discharge may result in further exceedances of a specific parameter the waterbody is listed for. The current list of 303(d)-listed waterbodies is available on Ecology's web site at [http://www.ecy.wa.gov/programs/wq/303d/1998/1998\\_by\\_wrias.html](http://www.ecy.wa.gov/programs/wq/303d/1998/1998_by_wrias.html) or by contacting Ecology's Federal Permits staff.

NOTE: An individual 401 Certification will not be required if the applicant provides documentation showing that the project or activity will either not result in a discharge containing the listed parameter or, if present, the parameter will not contribute to an increased impairment of the waterbody.

3. Projects that do not incorporate structures and/or modifications beneficial for fish or wildlife habitat (e.g., soil bioengineering, biotechnical design, rock barbs, etc.).

NOTE: An individual 401 certification will not be required if the project/activity is designed and constructed in accordance to guidelines developed by the Washington State Department of Fish and Wildlife.

## E. STATE CZM CONSISTENCY DETERMINATION CONDITIONS FOR THIS NWP

The Coastal Zone Management (CZM) Consistency Determination has been denied without prejudice for this NWP. An individual CZM Consistency Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone.

## F. CORPS NATIONAL GENERAL CONDITIONS FOR ALL NWPs

1. **Navigation.** No activity may cause more than a minimal adverse effect on navigation.
2. **Proper Maintenance.** Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.
3. **Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.
4. **Aquatic Life Movements.** No activity may substantially disrupt the necessary life-cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.
5. **Equipment.** Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.
6. **Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state or tribe in its Section 401 Water Quality Certification and Coastal Zone Management Act consistency determination.
7. **Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).
8. **Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
9. **Water Quality.**
  - (a) In certain states and tribal lands an individual 401 Water Quality Certification must be obtained or waived (See 33 CFR 330.4(c)).
  - (b) For NWPs 12, 14, 17, 18, 32, 39, 40, 42, 43, and 44, where the state or tribal 401 certification (either generically or individually) does not require or approve water quality management measures, the permittee must provide water quality management measures that will ensure that the authorized work does not result in more than



minimal degradation of water quality (or the Corps determines that compliance with state or local standards, where applicable, will ensure no more than minimal adverse effect on water quality). An important component of water quality management includes stormwater management that minimizes degradation of the downstream aquatic system, including water quality (refer to General Condition 21 for stormwater management requirements). Another important component of water quality management is the establishment and maintenance of vegetated buffers next to open waters, including streams (refer to General Condition 19 for vegetated buffer requirements for the NWP's). This condition is only applicable to projects that have the potential to affect water quality. While appropriate measures must be taken, in most cases it is not necessary to conduct detailed studies to identify such measures or to require monitoring.

10. **Coastal Zone Management.** In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived (see 33 CFR 330.4(d)).

11. **Endangered Species.**

(a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat and shall not begin work on the activity until notified by the District Engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. As a result of formal or informal consultation with the FWS or NMFS the District Engineer may add species-specific regional endangered species conditions to the NWPs.

(b) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the USFWS or the NMFS, both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS and NMFS or their world wide web pages at <http://www.fws.gov/r9end spp/end spp.html> and [http://www.nmfs.noaa.gov/prot\\_res/overview/es.html](http://www.nmfs.noaa.gov/prot_res/overview/es.html) respectively.

12. **Historic Properties.** No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the District Engineer has complied with the provisions of 33 CFR part 325, Appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

13. **Notification.**

(a) **Timing:** Where required by the terms of the NWP, the prospective permittee must notify the District Engineer with a preconstruction notification (PCN) as early as possible. The District Engineer must determine if the notification is complete within 30 days of the date of receipt and can request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the District Engineer will notify the prospective permittee that the notification is still incomplete and the PCN review process will not commence until all of the requested information has been received by the District Engineer. The prospective permittee shall not begin the activity:

(1) Until notified in writing by the District Engineer that the activity may proceed under the NWP with any special conditions imposed by the District or Division Engineer; or

(2) If notified in writing by the District or Division Engineer that an Individual Permit is required; or

(3) Unless 45 days have passed from the District Engineer's receipt of the complete notification and the prospective permittee has not received written notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Notification: The notification must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), Regional General Permit(s), or Individual Permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP (Sketches usually clarify the project and when provided result in a quicker decision.);

(4) For NWPs 7, 12, 14, 18, 21, 34, 38, 39, 40, 41, 42, and 43, the PCN must also include a delineation of affected special aquatic sites, including wetlands, vegetated shallows (e.g., submerged aquatic vegetation, seagrass beds), and riffle and pool complexes (see paragraph 13(f));

(5) For NWP 7 (Outfall Structures and Maintenance), the PCN must include information regarding the original design capacities and configurations of those areas of the facility where maintenance dredging or excavation is proposed;

(6) For NWP 14 (Linear Transportation Projects), the PCN must include a compensatory mitigation proposal to offset permanent losses of waters of the US and a statement describing how temporary losses of waters of the US will be minimized to the maximum extent practicable;

(7) For NWP 21 (Surface Coal Mining Activities), the PCN must include an Office of Surface Mining (OSM) or state-approved mitigation plan, if applicable. To be authorized by this NWP, the District Engineer must determine that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are minimal both individually and cumulatively and must notify the project sponsor of this determination in writing;

(8) For NWP 27 (Stream and Wetland Restoration Activities), the PCN must include documentation of the prior condition of the site that will be reverted by the permittee;

(9) For NWP 29 (Single-Family Housing), the PCN must also include:

(i) Any past use of this NWP by the Individual Permittee and/or the permittee's spouse;

(ii) A statement that the single-family housing activity is for a personal residence of the permittee;

(iii) A description of the entire parcel, including its size, and a delineation of wetlands. For the purpose of this NWP, parcels of land measuring 1/4-acre or less will not require a formal on-site delineation. However, the applicant shall provide an indication of where the wetlands are and the amount of wetlands that exists on the property. For parcels greater than 1/4-acre in size, formal wetland delineation must be prepared in accordance with the current method required by the Corps. (See paragraph 13(f));

(iv) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or the prospective permittee's spouse, within a one mile radius of the parcel, in any form of ownership (including any land owned as a partner, corporation, joint tenant, co-tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed;

(10) For NWP 31 (Maintenance of Existing Flood Control Facilities), the prospective permittee must either notify the District Engineer with a PCN prior to each maintenance activity or submit a five year (or less) maintenance plan. In addition, the PCN must include all of the following:

(i) Sufficient baseline information identifying the approved channel depths and configurations and existing facilities. Minor deviations are authorized, provided the approved flood control protection or drainage is not increased;

(ii) A delineation of any affected special aquatic sites, including wetlands; and,

(iii) Location of the dredged material disposal site;

(11) For NWP 33 (Temporary Construction, Access, and Dewatering), the PCN must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources;

(12) For NWPs 39, 43 and 44, the PCN must also include a written statement to the District Engineer explaining how avoidance and minimization for losses of waters of the US were achieved on the project site;

(13) For NWP 39 and NWP 42, the PCN must include a compensatory mitigation proposal to offset losses of waters of the US or justification explaining why compensatory mitigation should not be required. For discharges that cause the loss of greater than 300 linear feet of an intermittent stream bed, to be authorized, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;

(14) For NWP 40 (Agricultural Activities), the PCN must include a compensatory mitigation proposal to offset losses of waters of the US. This NWP does not authorize the relocation of greater than 300 linear-feet of existing serviceable drainage ditches constructed in non-tidal streams unless, for drainage ditches constructed in intermittent non-tidal streams, the District Engineer waives this criterion in writing, and the District Engineer has determined that the project complies with all terms and conditions of this NWP, and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;

(15) For NWP 43 (Stormwater Management Facilities), the PCN must include, for the construction of new stormwater management facilities, a maintenance plan (in accordance with state and local requirements, if applicable) and a compensatory mitigation proposal to offset losses of waters of the US. For discharges that cause the loss of greater than 300 linear feet of an intermittent stream bed, to be authorized, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;

(16) For NWP 44 (Mining Activities), the PCN must include a description of all waters of the US adversely affected by the project, a description of measures taken to minimize adverse effects to waters of the US, a description of measures taken to comply with the criteria of the NWP, and a reclamation plan (for all aggregate mining activities in isolated waters and non-tidal wetlands adjacent to headwaters and any hard rock/mineral mining activities);

(17) For activities that may adversely affect Federally-listed endangered or threatened species, the PCN must include the name(s) of those endangered or threatened species that may be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work; and

(18) For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

(c) **Form of Notification:** The standard Individual Permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b) (1)-(18) of General Condition 13. A letter containing the requisite information may also be used.

(d) **District Engineer's Decision:** In reviewing the PCN for the proposed activity, the District Engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The prospective permittee may submit a proposed mitigation plan with the PCN to expedite the process. The District Engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the District Engineer will notify the permittee and include any conditions the District Engineer deems necessary. The District Engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the District Engineer will expeditiously review the proposed compensatory mitigation plan. The District Engineer must review the plan within 45 days of receiving a complete PCN and determine whether the conceptual or specific proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the District Engineer to be minimal, the District Engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP. If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then the District Engineer will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an Individual Permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the District Engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level. When conceptual mitigation is included, or a mitigation plan is required under item (2) above, no work in waters of the US will occur until the District Engineer has approved a specific mitigation plan.

(e) **Agency Coordination:** The District Engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level. For activities requiring notification to the District Engineer that result in the loss of greater than 1/2-acre of waters of the US, the District Engineer will provide immediately (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy to the appropriate Federal or state offices (USFWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the District Engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the District Engineer will wait an additional 15 calendar days before making a decision on the notification. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The District Engineer will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. As required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act, the District Engineer will provide a response to NMFS within 30 days of receipt of any Essential Fish Habitat conservation recommendations. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification.

(f) **Wetland Delineations:** Wetland delineations must be prepared in accordance with the current method required by the Corps (For NWP 29 see paragraph (b)(9)(iii) for parcels less than 1/4-acre in size). The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 45-day period will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate.

14. **Compliance Certification.** Every permittee who has received NWP verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter and will include:

- (a) A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions;
- (b) A statement that any required mitigation was completed in accordance with the permit conditions; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

15. **Use of Multiple Nationwide Permits.** The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the US authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit (e.g. if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the US for the total project cannot exceed 1/3-acre).

16. **Water Supply Intakes.** No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may occur in the proximity of a public water supply intake except where the activity is for repair of the public water supply intake structures or adjacent bank stabilization.

17. **Shellfish Beds.** No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4.

18. **Unsuitable Material.** No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the CWA).

19. **Mitigation.** The District Engineer will consider the factors discussed below when determining the acceptability of appropriate and practicable mitigation necessary to offset adverse effects on the aquatic environment that are more than minimal.

- (a) The project must be designed and constructed to avoid and minimize adverse effects to waters of the US to the maximum extent practicable at the project site (i.e., on site).
- (b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.
- (c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland impacts requiring a PCN, unless the District Engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. Consistent with National policy, the District Engineer will establish a preference for restoration of wetlands as compensatory mitigation, with preservation used only in exceptional circumstances.
- (d) Compensatory mitigation (i.e., replacement or substitution of aquatic resources for those impacted) will not be used to increase the acreage losses allowed by the acreage limits of some of the NWPs. For example, 1/4-acre of wetlands cannot be created to change a 3/4-acre loss of wetlands to a 1/2-acre loss associated with NWP 39 verification. However, 1/2-acre of created wetlands can be used to reduce the impacts of a 1/2-acre loss of wetlands to the minimum impact level in order to meet the minimal impact requirement associated with NWPs.

(c) To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing and maintaining wetland or upland vegetated buffers to protect open waters such as streams; and replacing losses of aquatic resource functions and values by creating, restoring, enhancing, or preserving similar functions and values, preferably in the same watershed.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., easements, deed restrictions) of vegetated buffers to open waters. In many cases, vegetated buffers will be the only compensatory mitigation required. Vegetated buffers should consist of native species. The width of the vegetated buffers required will address documented water quality or aquatic habitat loss concerns. Normally, the vegetated buffer will be 25 to 50 feet wide on each side of the stream, but the District Engineers may require slightly wider vegetated buffers to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the Corps will determine the appropriate compensatory mitigation (e.g., stream buffers or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where vegetated buffers are determined to be the most appropriate form of compensatory mitigation, the District Engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland impacts.

(g) Compensatory mitigation proposals submitted with the "notification" may be either conceptual or detailed. If conceptual plans are approved under the verification, then the Corps will condition the verification to require detailed plans be submitted and approved by the Corps prior to construction of the authorized activity in waters of the US.

(h) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases that require compensatory mitigation, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

20. **Spawning Areas.** Activities, including structures and work in navigable waters of the US or discharges of dredged or fill material, in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.

21. **Management of Water Flows.** To the maximum extent practicable, the activity must be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill material must withstand expected high flows. The activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and provide for not increasing water flows from the project site, relocating water, or redirecting water flow beyond preconstruction conditions. Stream channelizing will be reduced to the minimal amount necessary, and the activity must, to the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the activity is part of a larger system designed to manage water flows. In most cases, it will not be a requirement to conduct detailed studies and monitoring of water flow. This condition is only applicable to projects that have the potential to affect waterflows. While appropriate measures must be taken, it is not necessary to conduct detailed studies to identify such measures or require monitoring to ensure their effectiveness. Normally, the Corps will defer to state and local authorities regarding management of water flow.

22. **Adverse Effects From Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to the acceleration of the passage of water, and/or the restricting its flow shall be minimized to the maximum extent practicable. This includes structures and work in navigable waters of the US, or discharges of dredged or fill material.

23. **Waterfowl Breeding Areas.** Activities, including structures and work in navigable waters of the US or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

24. **Removal of Temporary Fills.** Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

25. **Designated Critical Resource Waters.** Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally listed threatened and endangered species, coral reefs, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the District Engineer after notice and opportunity for public comment. The District Engineer may also designate additional critical resource waters after notice and opportunity for comment.

(a) Except as noted below, discharges of dredged or fill material into waters of the US are not authorized by NWP's 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, and 44 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. Discharges of dredged or fill materials into waters of the US may be authorized by the above NWP's in National Wild and Scenic Rivers if the activity complies with General Condition 7. Further, such discharges may be authorized in designated critical habitat for Federally listed threatened or endangered species if the activity complies with General Condition 11 and the USFWS or the NMFS has concurred in a determination of compliance with this condition.

(b) For NWP's 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with General Condition 13, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The District Engineer may authorize activities under these NWP's only after it is determined that the impacts to the critical resource waters will be no more than minimal.

26. **Fills Within 100-Year Floodplains.** For purposes of this General Condition, 100-year floodplains will be identified through the existing Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps.

(a) **Discharges in Floodplain; Below Headwaters.** Discharges of dredged or fill material into waters of the US within the mapped 100-year floodplain, below headwaters (i.e., 5 cfs), resulting in permanent above-grade fills, are not authorized by NWP's 39, 40, 42, 43, and 44.

(b) **Discharges in Floodway; Above Headwaters.** Discharges of dredged or fill material into waters of the US within the FEMA or locally mapped floodway, resulting in permanent above-grade fills, are not authorized by NWP's 39, 40, 42, and 44.

(c) The permittee must comply with any applicable FEMA-approved state or local floodplain management requirements.

27. **Construction Period.** For activities that have not been verified by the Corps and the project was commenced or under contract to commence by the expiration date of the NWP (or modification or revocation date), the work must be completed within 12-months after such date (including any modification that affects the project). For activities that have been verified and the project was commenced or under contract to commence within the verification period, the work must be completed by the date determined by the Corps. For projects that have been verified by the Corps, an extension of a Corps approved completion date maybe requested. This request must be submitted at least one month before the previously approved completion date.

## G. CORPS REGIONAL GENERAL CONDITIONS FOR ALL NWP's

1. **Mature Forested and Bog and Bog-like Wetlands.** The use of NWP's is specifically prohibited in mature forested wetlands or bog and bog-like wetlands or just these components of a wetland system (as defined in the Definition section of this Public Notice), except for projects provided coverage under the following NWP's:

- NWP 3(i,ii) - Maintenance
- NWP 20 - Oil Spill Cleanup

- NWP 32 - Completed Enforcement Actions
- NWP 38 - Cleanup of Hazardous and Toxic Waste
- NWP 40(a) - USDA program participant

NOTE: NWP regulations do not allow the regional conditioning of NWP 40(a).

2. Access. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being, or has been, accomplished in accordance with the terms and conditions of your permit.

3. Commencement Bay. An individual permit is required in the Commencement Bay Study Area (CBSA) for activities which would have qualified for the following NWPs:

- NWP 12 - Utility Line Activities (substations and access roads)
- NWP 13 - Bank Stabilization
- NWP 14 - Linear Transportation Crossings
- NWP 23 - Approved Categorical Exclusions
- NWP 29 - Single-Family Housing
- NWP 39 - Residential, Commercial, and Institutional Developments
- NWP 40 - Agricultural Activities
- NWP 41 - Reshaping Existing Drainage Ditches
- NWP 42 - Recreational Facilities
- NWP 43 - Stormwater Management Facilities

The CBSA is located near the southern end of Puget Sound's main basin at Tacoma, Pierce County, Washington. The CBSA extends from Brown's Point around the bay to Point Defiance and includes the commercial waterways, wetlands, and any other jurisdictional waters. From Point Defiance, the line runs southeast to State Route 7 (Pacific Avenue), then south to the centerline of I-5; then east (northbound lanes) along I-5 to the Puyallup River. The boundary extends 200 feet on either side of the Puyallup River southeast to the Clark Creek Road (Melroy) Bridge. From the Puyallup River, the boundary extends east along I-5 to 70th Avenue E. The line then returns to Brown's Point to the northwest, following the 100-foot contour elevation above sea level located east of Hylebos Creek and Marine View Drive.

4. Mill Creek Special Area Management Plan (SAMP). Within the boundaries of the (SAMP), the following NWPs can be used only in those areas designated as "Developable Wetlands":

- NWP 14 - Linear Transportation Crossings
- NWP 23 - Approved Categorical Exclusions
- NWP 29 - Single-Family Housing
- NWP 33 - Temporary Construction, Access and Dewatering
- NWP 39 - Residential, Commercial, and Institutional Developments
- NWP 40 - Agricultural Activities
- NWP 41 - Reshaping Existing Drainage Ditches
- NWP 42 - Recreational Facilities
- NWP 43 - Stormwater Management Facilities

Until the SAMP is approved, the users of these NWPs listed above (except NWP 40a.) must notify the District Engineer in accordance with General Condition 13 for any acreage or volume proposed. Once the SAMP is approved, the "Notification" limits will be as specified in the individual NWPs.

Mitigation requirements for these projects must either be onsite or within the areas designated as "Preferred Mitigation Sites". Mitigation plans must comply with the requirements found within the Mill Creek Special Area Management Plan, King County, Washington, dated April 2000.

An individual permit is required for all proposals in "Developable Wetlands" that would have qualified for NWPs other than those listed above.



NWP 27, Stream Restoration and Enhancement Activities, can be used within the SAMP, but, must comply with the requirements found within the Mill Creek Special Area Management Plan, King County, Washington.

The Mill Creek SAMP applies to all areas and tributaries drained by Mill Creek (Auburn), Mullen Slough, Midway Creek, Auburn Creek, and the area bounded by 4th Street Northeast in Auburn on the south, and the Ordinary High Water mark of the Green River on the east and north.

5. **Prohibited Work Times for Bald Eagle Protection.** For compliance with National General Condition 11, the following construction activity prohibitions apply to protect bald eagles, listed as threatened under the Endangered Species Act:

- (a) No construction activity authorized under a NWP shall occur within 1/4 mile of an occupied bald eagle nest, nocturnal roost site, or wintering concentration area, within the following seasonal work prohibition times.
- (b) No construction activity authorized under a NWP shall occur within 1/2 mile BY LINE OF SIGHT of an occupied bald eagle nest or nocturnal roost site, within the following seasonal work prohibition times:

Work prohibition times:

- (1) Nesting between January 1 and August 15 each year.
- (2) Wintering areas between November 1 and March 31 each year.

Exceptions to these prohibited work times can be made by request to the Corps and approved by the U.S. Fish and Wildlife Service (USFWS).

Contact the USFWS to determine if a bald eagle nest, nocturnal roost, or wintering concentration occurs near your proposed project:

West of Cascades: Olympia Office -- (360) 753-9440

East of Cascades: Ephrata -- (509) 754-8580 or Spokane -- (509) 893-8002

Mainstem of the Columbia River downstream from McNary Dam: Portland -- (503) 231-6179

## H. ADDITIONAL LIMITATIONS ON THE USE OF NWPs

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other Federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project.
6. If future operations by the United States require the removal, relocation, or other alteration of the work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, you will be required, upon due notice from the U. S Army Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

## I. FURTHER INFORMATION

Further information about the U.S. Army Corps of Engineers regulatory program, including nationwide permits, may also be accessed on our Internet page: <http://www.nwos.usace.army.mil> (select "Regulatory/Permits").

# NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Washington State Dept. of Transportation	File Number: 200401448	Date:
Attached is:		See Section below
<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
<input type="checkbox"/>	PERMIT DENIAL	C
<input checked="" type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION	D
<input type="checkbox"/>	PRELIMINARY JURISDICTIONAL DETERMINATION	E

**SECTION II:** The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/ncf/functions/cv/cccwo/reg-on-Corp-regulations-at-33-CHR-Part-331>.

**A: INITIAL PROFFERED PERMIT:** You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT:** You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed); by contacting the Corps district for further instruction. Also, you may provide new information for further consideration by the Corps to reevaluate the JD.

**SECTION II - REQUEST FOR APPEAL OR OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**ADDITIONAL INFORMATION:** The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION**

If you have questions regarding this decision and/or the appeal process you may contact:

Kate Stenberg, Project Manager  
U.S. Army Corps of Engineers, Seattle District  
Post Office Box 3755  
Seattle, Washington 98124-3755  
Telephone: (206) 764-6912

If you only have questions regarding the appeal process you may also contact:

Mores Bergman, Appeal Review Officer  
U.S. Army Corps of Engineers, Northwestern Division  
12565 West Center Road  
Omaha, Nebraska 68144-3869  
Telephone: (402) 697-2533

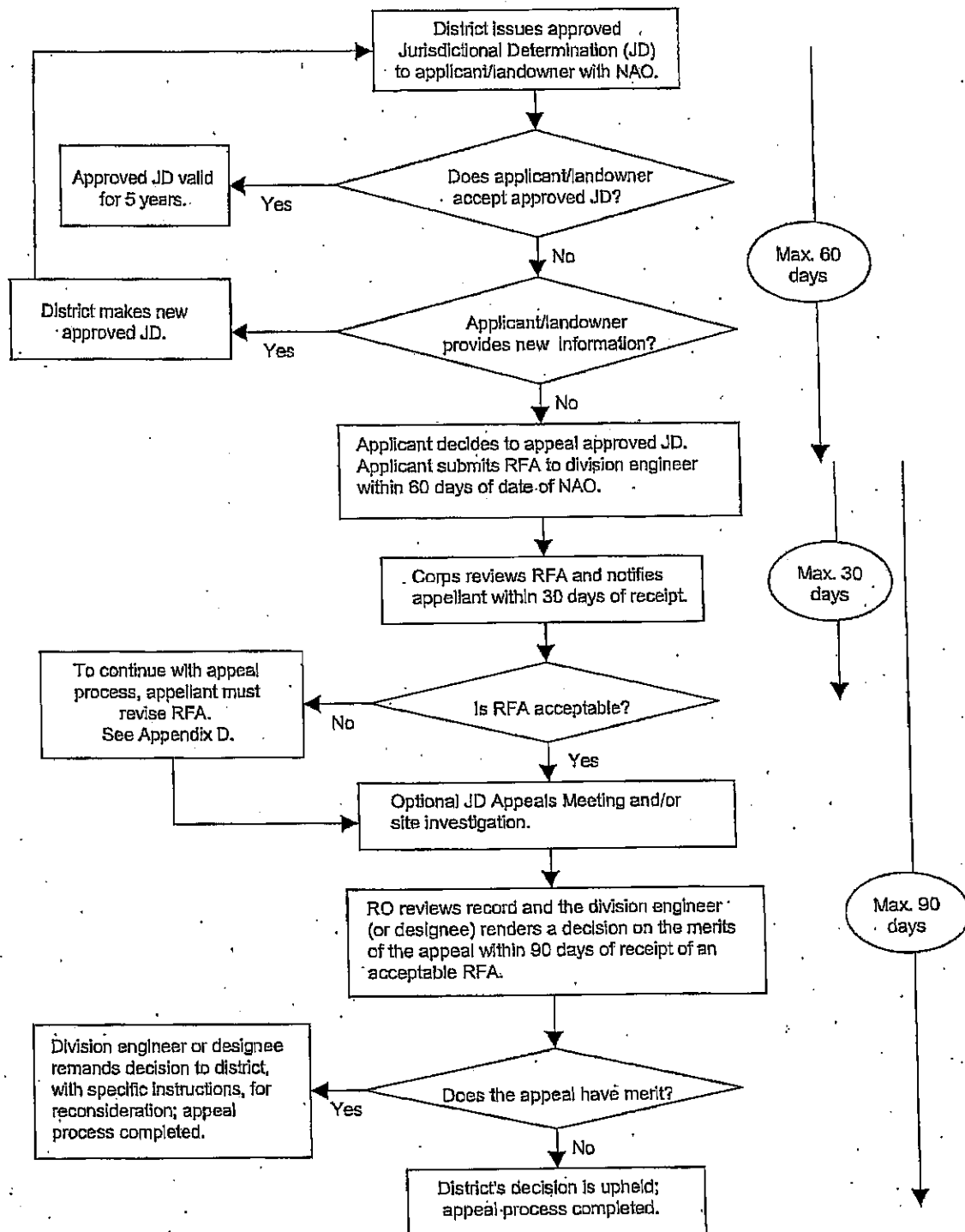
**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15-day notice of any site investigation, and will have the opportunity to participate in all site investigations.

\_\_\_\_\_  
Signature of appellant or agent.

Date:

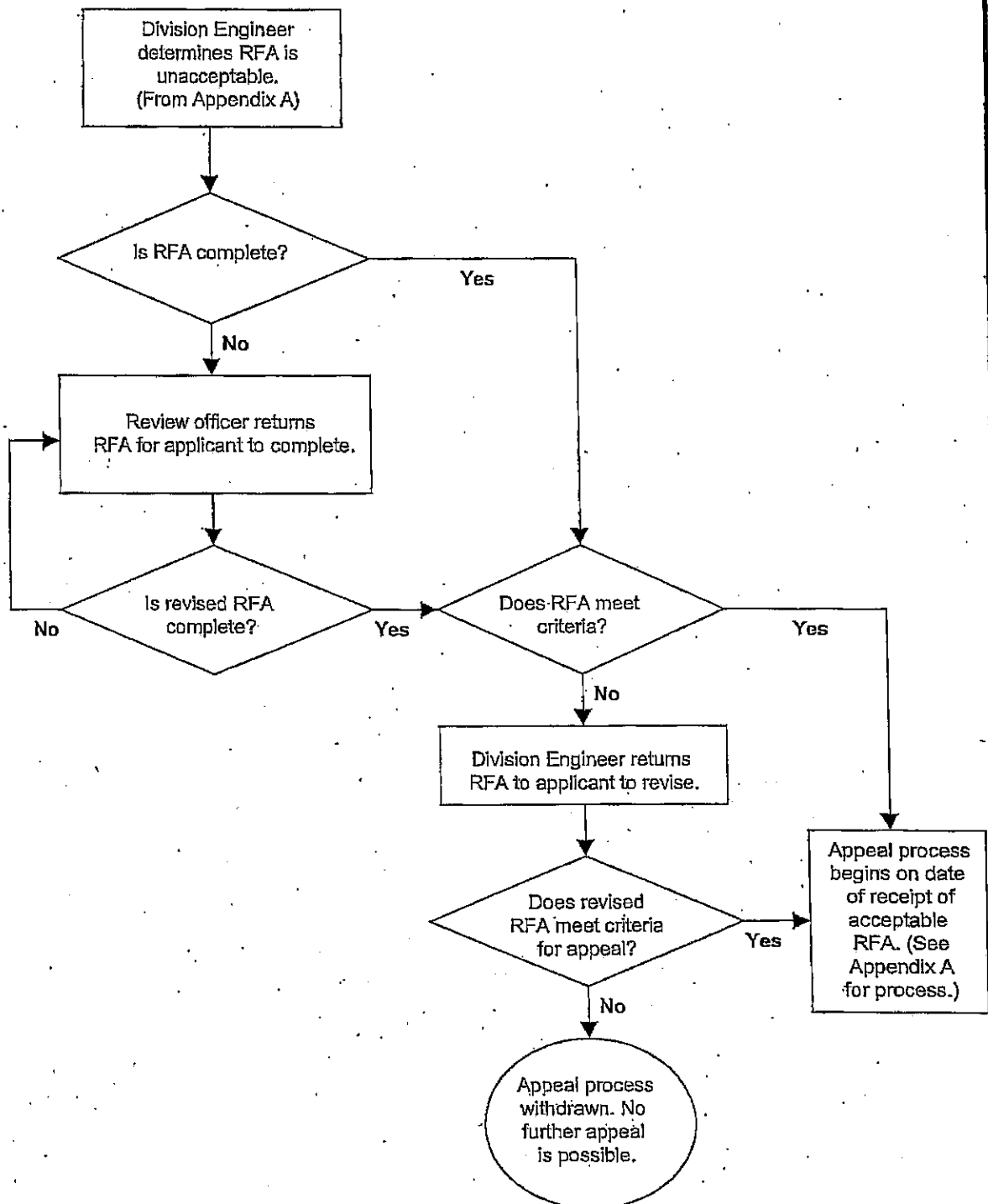
Telephone number:

## Administrative Appeal Process for Approved Jurisdictional Determinations



Appendix C

## Process for Unacceptable Request for Appeal



Appendix D



US Army Corps  
of Engineers @  
Seattle District

## CERTIFICATE OF COMPLIANCE WITH DEPARTMENT OF THE ARMY PERMIT



Permit Number: 200401448

Name of Permittee: Washington State Department of Transportation

Date of Issuance: JAN 24 2005

Upon completion of the activity authorized by this permit, please check the applicable boxes below, sign this certification, and return it to the following address:

Department of the Army  
U.S. Army Corps of Engineers  
Seattle District, Regulatory Branch  
Post Office Box 3755  
Seattle, Washington 98125-3755

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with the terms and conditions of your authorization, your project is subject to suspension, modification, or revocation.

- ☐ The work authorized by the above-referenced permit has been completed in accordance with the terms and conditions of this permit.
- ☐ The mitigation required (not including monitoring) by the above-referenced permit has been completed in accordance with the terms and conditions of this permit.

\_\_\_\_\_  
Signature of Permittee